

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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Baltimore, Maryland 21244-1850



Disabled & Elderly Health Programs Group

August 23, 2018

Heather Smith
Medicaid Director
State of Wisconsin, Department of Health Services
1 West Wilson Street, Room 350 PO Box 309
Madison, WI 53701-0309

Dear Ms. Smith:

In follow-up to the 7/14/17 initial approval granted to Wisconsin's Home & Community Based Services (HCBS) Statewide Transition Plan (STP), CMS provided additional detailed feedback to the state to assist with final approval and implementation of its STP. CMS acknowledges that since this technical assistance was provided, work has continued within the state to bring settings into compliance and further develop the STP; however, a summary of this feedback is attached for reference to assist in the state's efforts as it works towards final approval.

In order to receive final approval, the STP should include:

- A comprehensive summary of completed site-specific assessments of all HCBS settings, validation of those assessment results, and inclusion of the aggregate outcomes of these activities;
- Draft remediation strategies and a corresponding timeline for resolving issues that the site-specific settings assessment process and subsequent validation strategies identified by the end of the HCBS settings transition period (March 17, 2022);
- A detailed plan for identifying settings presumed to have institutional characteristics, as well as the proposed process for evaluating these settings and preparing for submission to CMS for review under heightened scrutiny;
- A process for communicating with beneficiaries currently receiving services in settings that the state has determined cannot or will not come into compliance with the HCBS settings rule by March 17, 2022; and
- A description of ongoing monitoring and quality assurance processes that will ensure all settings providing HCBS continue to remain fully compliant with the federal settings criteria in the future.

Prior to submitting the updated version of the STP for consideration of final approval, the state will need to issue the STP for a minimum 30-day public comment period. I want to personally thank the state for its efforts thus far on the HCBS STP, and look forward to the next iteration of the STP that addresses the feedback in the attachment.

Sincerely,

Ralph F. Lollar, Director
Division of Long Term Services and Supports

ATTACHMENT

Additional CMS feedback on areas where improvement is needed by the State of Wisconsin in order to receive final approval of the HCBS Statewide Transition Plan

PLEASE NOTE: It is anticipated that the state will need to go out for public comment once these changes are made and prior to resubmitting to CMS for final approval. The state is requested to provide a timeline and anticipated date for resubmission for final approval as soon as possible.

Site-Specific Assessments

Assessment & Validation Process:

- ***Provider Self-assessment Process:*** Wisconsin used a single standardized tool to conduct provider self-assessments of all residential and non-residential settings. Providers were not asked to attach documentation to the self-assessment, but were informed that follow-up could include a request for such documentation. Please explain in the STP how the state is validating those settings not receiving a site visit if the settings are not required to provide any documentation that could be utilized in a desk review.
 - Please also describe the validation tool that uses the aggregated non-residential provider self-assessment data to set benchmarks for compliance (page 11) and please clarify the benchmarks the state is using to determine compliance. All settings must comply with all of the settings criteria. Additionally, please explain how this tool relates to the validation tools described on pages 12 and 13 of the STP.
 - The state notes in its description for residential self-assessments that it worked closely with state licensing entities responsible for licensing residential facilities. Please clarify whether this was also the process for non-residential settings.
- ***Validation:*** The State Medicaid Agency (SMA) will review each submitted self-assessment to make a preliminary determination as to whether the setting is compliant with the settings rule criteria.
 - Please clarify the validation process for those settings that will not receive onsite visits in the STP. The state can use multiple validation processes (including but not limited to state onsite visits; data collection on beneficiary experiences; desk reviews of provider policies, consumer surveys, and feedback from external stakeholders; leveraging of existing case management, licensing & certification, and quality management review processes; partnerships with other federally-funded state entities, including but not limited to DD and aging networks, etc.).
 - Please explain in the STP how the state will handle discrepancies between the self-assessment surveys and the on-site visit findings.
 - Please ensure that the dates listed in the timeline are consistent throughout the STP.

- ***Reporting of Setting Validation Results:*** Please report the findings of all validation activities once they are completed. In this analysis, please clearly delineate the compliance results across categories of settings for all waivers in a manner that is easy for the public to review and understand. Examples for how other states are effectively organizing and compiling setting assessment and validation results are available upon request. Please confirm the number of settings in each category of HCBS that the state found to be:
 - Fully compliant with the federal HCBS requirements;
 - Could come into full compliance with modifications;
 - Cannot comply with the federal HCBS requirements; or
 - Are presumptively institutional in nature.
- ***Individual, Private Homes:*** The state may make the presumption that privately owned or rented homes and apartments of people living with family members, friends, or roommates meet the home and community-based settings criteria if they are integrated in typical community neighborhoods where people who do not receive home and community-based services also reside. A state will generally not be required to verify this presumption. However, the state must outline what it will do to monitor compliance of this category of settings with the regulatory criteria over time. CMS requests that Wisconsin provide additional details about its strategy for compliance monitoring of these settings. Note, settings where the beneficiary lives in a private residence owned by an unrelated caregiver (who is paid for providing HCBS to the individual), are considered provider-owned or controlled settings and should be evaluated as such.
- ***Group Settings:*** As a reminder, all settings that group or cluster individuals for the purposes of receiving HCBS must be assessed by the state for compliance with the rule. This includes all group residential and non-residential settings, including but not limited to prevocational services, group supported employment and group day habilitation activities.
- ***Reverse Integration Strategies:*** CMS requests additional detail from the state as to how it will assure that non-residential settings comply with the various requirements of the HCBS rule, particularly around integration of HCBS beneficiaries into the broader community. States cannot comply with the rule simply by bringing individuals without disabilities from the community into a setting. Reverse integration, or a model of intentionally inviting individuals not receiving HCBS into a facility-based setting to participate in activities with HCBS beneficiaries is not considered by CMS by itself to be a sufficient strategy for complying with the community integration requirements outlined in the HCBS settings rule.
- ***Non-disability Specific Settings:*** Please provide clarity on the manner in which the state will ensure that beneficiaries have access to services in non-disability specific settings among their service options for both residential and non-residential services. The STP should also indicate the steps the state is taking to build capacity among providers to

increase access to non-disability specific setting options across home and community-based services.

Site-Specific Remediation

CMS requests the state add details to the STP regarding site-specific remediation, including the types of technical assistance the state is providing to providers to help them come into compliance with the federal settings rule. For those settings that are not able to be brought into compliance, please provide a detailed plan the state will use for communicating and assisting beneficiaries currently receiving services in settings that are determined not to be able to come into compliance prior to the end of the transition period that includes:

- A description for how participants will be offered informed choice and assistance in locating a new residential or nonresidential setting in which HCBS are provided or accessing alternative funding streams.
- An estimated number of beneficiaries who are in settings that the state anticipates will not be in compliance by the end of the transition period and may need to access alternative funding streams or receive assistance in locating a compliant setting.
- Confirmation of the state's timeline for supporting beneficiaries in exploring and securing alternative options should a transition out of a non-compliant setting be necessary.
- An explanation of how the state will ensure that needed services and supports are in place in advance of the individual's transition.

Ongoing Monitoring

Please ensure the state clarifies which processes will be used to continually assess settings versus processes used only to screen settings prior to enrollment as a provider. Each waiver program should have a process to ensure settings are continuing to comply with the settings rule.

- Please specify the frequency of the periodic compliance site visits by the state licensing authority, or by the entity that certified the provider (page 15).
- The STP indicates that the state will develop a state-level data repository for initial and ongoing determinations of compliance with the HCBS settings rule (page 16). Please provide more details in the STP as to when this repository will be available for the state to use as part of their ongoing monitoring process. Please also include target start and end dates for implementation of the repository as part of the timeline in the STP.
- Please provide more details as to how the state is planning to engage a third party or use state oversight staff to monitor compliance for the self-directed IRIS program in the STP (page 15). What types of activities will the third party or state staff complete in order to monitor compliance? How frequently will these activities occur?
- Please provide more information in the STP as to how the state will incorporate monitoring into person-centered planning and required waiver monitoring visits (page 16). What types of activities will this entail and how frequently will they occur?

Heightened Scrutiny

As a reminder, the state must clearly lay out its process for identifying settings that are presumed to have the qualities of an institution. These are settings for which the state must submit information for the heightened scrutiny process if the state determines, through its assessments, that these settings do have qualities that are home and community-based in nature and do not have the qualities of an institution. If the state determines it will not submit information on a presumptively institutional setting, the presumption will stand and the state must describe the process for communicating with the individuals involved. Please only submit those settings under heightened scrutiny that the state believes will overcome any institutional characteristics and can comply with the federal HCBS rule. Please include further details about the criteria or deciding factors that will be used consistently across reviewers to make a final determination regarding whether or not to move a setting forward to CMS for heightened scrutiny review. There are state examples of heightened scrutiny processes available upon request, as well as several tools and sub-regulatory guidance on this topic available online at <http://www.medicaid.gov/HCBS>.

Milestones

A milestone template has been completed by CMS with timelines identified in the STP and has been sent to the state for review. CMS requests that the state review the information in the template and send the updated document to CMS. The chart should reflect anticipated milestones for completing systemic remediation, settings assessment and remediation, heightened scrutiny, communications with beneficiaries and ongoing monitoring of compliance.